

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**UNITED STATES OF AMERICA**

**V.**

**ERIKA MARTINEZ-GALARZA**

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**CRIMINAL NO. 6:08-CR-43**

**REPORT AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

On January 14, 2009, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant, Erika Martinez-Galarza. The government was represented by Alan Hurst, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Wayne Dickey.

Defendant originally pleaded guilty to the offense of Transporting an Undocumented Alien Within the United States by Guiding into the United States for Private Financial Gain, a Class C felony. The offense carried a statutory maximum imprisonment term of 10 years. The United States Sentencing Guideline range, based on a total offense level of 11 and a criminal history category of II, was 10 to 16 months. On March 13, 2007, U.S. District Judge George P. Kazen, of the Southern District of Texas, Laredo Division, sentenced Defendant to 12 months and 1 day imprisonment and three years supervised release subject to the standard conditions of release, plus special conditions to perform 75 hours of community service and to participate in a mental health treatment program. On August 29, 2007, Defendant completed the term of imprisonment and began service of the supervision term.

On June 12, 2008, U.S. District Judge Michael H. Schneider accepted jurisdiction of the case from the Southern District of Texas.

Under the terms of supervised release, Defendant was required to, in relevant part: report to the probation officer as directed by the Court or probation officer, and to submit a truthful and complete written report within the first five days of each month, and to notify the probation officer ten days prior to any change of residence. In its petition, the government alleges that Defendant violated her conditions of supervised release by failing to submit a truthful and complete written report within the first five days of February, March, April, May, June, and July 2008, and for failing to notify the probation officer 10 days prior to any change in residence.

If the Court finds by a preponderance of the evidence that Defendant committed these violations, a statutory sentence of no more than two years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). Pursuant to Section 7B1.1(a) of the Sentencing Guidelines, violating a condition of supervision by failing to submit a truthful and complete written report within the first five days of February, March, April, May, June, and July 2008, and for failing to notify the probation officer 10 days prior to any change in residence would constitute a Grade C violation, for which the Court shall revoke Defendant's term of supervised release in favor of a term of imprisonment, or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B3.1(a)(2). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade C violation is 4 to 10 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to violating conditions of supervision by failing to submit a truthful and complete written report within the first five days of February, March, April, May, June, and July 2008, and for failing to notify the probation officer 10 days prior to any change in residence. In exchange, the government agreed to recommend that Defendant serve 4 months with no

supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Defendant, Erika Martinez-Galarza, be committed to the custody of the Bureau of Prisons for a term of imprisonment of 4 months with no supervised release to follow. The place of confinement is recommended to be in or around Fort Worth, Texas.

The parties have waived their right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael Schneider for adoption immediately upon issuance.

**So ORDERED and SIGNED this 14th day of January, 2009.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE